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DISTRICT IV

September 4, 2018

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You are hereby notified that the Court has entered the following opinion and order:

2017AP917-CR State of Wisconsin v. Nathaniel S. Dickman
(L.C. # 2006CF571)

Before Lundsten, P.J., Sherman and Blanchard, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Nathaniel S. Dickman appeals a circuit court judgment denying his motion to terminate his probation for a 2006 conviction. Dickman made this motion as part of his resentencing after the Department of Corrections ("the DOC") revoked his probation due to several rule violations

that occurred during 2015. Dickman contends that the circuit court erred in determining that he was still on probation for the 2006 conviction at the time that he committed some of these rule violations. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).[1] We reject Dickman's arguments and affirm.

Dickman's criminal history is complicated, and it involves several periods in which he has been released to community supervision but then reincarcerated. For the purpose of this appeal, we focus only on the aspects of his history that are relevant to the narrow issue argued by the parties. In 1998, Dickman pled guilty to several counts of burglary arising from two separate cases. We refer to these convictions collectively as "the 1998 convictions." Dickman was sentenced to concurrent five-year sentences for the 1998 convictions. In 2006, at a time when Dickman was serving the extended supervision portion of the sentences for the 1998 convictions, Dickman was involved in an automobile accident in which he hit an unattended vehicle and left the scene. Dickman waived revocation proceedings and was reincarcerated based on his 1998 convictions.[2] Dickman also pled guilty to two counts of reckless endangerment in connection with the accident. We refer to these convictions as "the 2006 convictions." Dickman was sentenced to one year of incarceration and five years of extended supervision on Count 1, and six

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] Dickman asserted in his motion to terminate that the sentences from the 1998 convictions were the only sentences in place at the time of his sentencing in March 2007. However, the sentencing transcript indicates that Dickman was also on extended supervision for a set of convictions from 1999. Neither party addresses whether the 1999 convictions affect the analysis, and so we disregard them as well.

years of probation on Count 2. The court ordered these two sentences to be served consecutive to any previously imposed sentences but concurrent to each other.

In 2015, the DOC instituted revocation proceedings against Dickman on the grounds that he had violated his probation conditions by drinking and failing to obey officers at various times in 2015. Dickman filed a motion to terminate his probation for Count 2 of the 2006 convictions, arguing that the DOC had incorrectly calculated the start date of his probationary term, and that he was no longer on probation for Count 2 of the 2006 convictions at the time of the rule violations. The DOC argued that the sentences resulting from the *1998 convictions* had terminated on August 26, 2010, and Dickman did not dispute this point. However, Dickman focused on the fact that the court ordered the sentences for Counts 1 and 2 of his 2006 convictions to run concurrent to each other. He pointed to the fact that he was released from incarceration in September 2008, thereby marking the end of the one-year period of incarceration on Count 1. Dickman argued that the fact that Count 2 ran concurrently with Count 1 meant that he must have also completed one year of his six-year term of probation as of September 2008. By this logic, Dickman contended that there were only five years left on his term of probation for Count 2, and that the remaining five years of this probationary period began to run when the sentences for the 1998 convictions were discharged on August 26, 2010. The problem, Dickman argued, is that some of the violations occurred after August 26, 2015.

The DOC opposed Dickman's motion, arguing that the fact that Dickman's sentence for Count 2 of the 2006 conviction was consecutive to any sentence in place meant that the six-year term of probation did not begin until the sentences for Dickman's 1998 convictions were discharged on August 26, 2010.

The circuit court denied Dickman's motion. The court explained that, in imposing sentences for the 2006 convictions that would be consecutive to any sentences in place, it had no way of predicting what would happen with Dickman's existing sentences. However, the court wanted Dickman to serve a continuous period of incarceration for Count 1 before being released to extended supervision or parole for the 1998 convictions. The court explained that it had decided to run Counts 1 and 2 concurrent to each other so that Dickman would not have to serve the full five years of extended supervision on Count 1 before beginning his probation on Count 2. Nonetheless, the court explained that it did intend for Dickman to serve a full six years on supervision, in addition to the one year of incarceration, for the 2006 convictions.

In his opening brief in this appeal, Dickman again argues that the fact that the sentences for Count 1 and Count 2 were ordered to run concurrently to each other means that Dickman completed one of the years of probation while serving the one-year period of incarceration for Count 1. However, Dickman does not cite any authority for the proposition that concurrent sentences of incarceration and probation must always begin at the same time. Nor does Dickman explain how his interpretation can be reconciled with the circuit court's order that the probation term for Count 2 would run consecutive to any other sentence in place.

In its response brief, the State contends that Dickman's interpretation of the original sentence for the 2006 convictions violates the express intent of the sentencing court to have Dickman serve a continuous period of incarceration, but still serve a term of probation that was consecutive to any existing sentences. In addition, the State argues that the term of probation for Count 2 could not, as a matter of law, begin to run until the sentences for the 1998 convictions had terminated. Specifically, our supreme court has held that a probationary term "commence[s] consecutively to the expiration of *an entire sentence* inclusive of any potential parole term."

Grobarchik v. State, 102 Wis. 2d 461, 469, 307 N.W.2d 170 (1981) (emphasis added). The court further explained that the relevant statute "does not authorize the imposition of probation upon release from prison on parole, and in the absence of such a statutory provision the [circuit court] judge is without power to fashion such a criminal disposition." ***Id.*** Based on this authority, the State argues that Dickman's six-year term of probation for Count 2 of the 2006 convictions properly began when the sentences for his 1998 convictions were discharged on August 26, 2010, and that Dickman was therefore still serving his term of probation when he violated probation rules in 2015.

Dickman has not filed a reply brief. We therefore take this as an admission that the State's arguments are correct.[3] *See* ***Fischer v. Wisconsin Patients Comp. Fund***, 2002 WI App 192, ¶1 n.1, 256 Wis. 2d 848, 650 N.W.2d 75 ("An argument asserted by a respondent on appeal and not disputed by the appellant in the reply brief is taken as admitted.").

Upon the foregoing reasons,

IT IS ORDERED that the circuit court judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

[3] In lieu of filing a reply brief, Dickman submitted a letter stating that he did not concede that the State's arguments were correct. Instead, Dickman asserted that he had adequately addressed the State's arguments in his opening brief. However, Dickman's opening brief made no effort to distinguish the authority on which the State relies, nor did it address the circuit court's discussion of its intentions in sentencing Dickman for the 2006 convictions.